IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

CWP No.12663 of 2007
Date of decision: 10.09.2007

Raj Kumar.

-----Petitioner

Vs.

Presiding Officer & Others.

-----Respondents

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL

HON'BLE MR JUSTICE AJAI LAMBA

Present: Mr. Amit Rawal, Advocate
for the petitioner.

This writ petition seeks quashing of award dated 10.12.2006, Annexure P-10, rendered by the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

The petitioner was employed as Clerk-cum-Godown Keeper with the Punjab National Bank. A chargesheet was issued to him, alleging misconduct of making false entries and thereby committing fraud, to cause loss to the Bank. The Bank lodged FIR, but after trial, the petitioner was acquitted vide judgment dated 8.1.1985, Annexure P-2, for want of adequate evidence. The Bank, thereafter, initiated disciplinary proceedings by appointing a Inquiry Officer on 21.2.1986, who gave his report dated 4.6.1988, Annexure P-3, holding the charges to be proved. After giving further opportunity to the petitioner, to meet the findings in the inquiry report, the order of dismissal from service

was passed on 14.7.1988, Annexure P-6. The petitioner preferred an appeal and the Appellate Authority modified the order of punishment from dismissal to termination of service vide order dated 29.9.1988, Annexure P-8. Thereafter, the petitioner raised an industrial dispute, which was referred for adjudication.

The Industrial Tribunal held that the inquiry against the workman was fair and the workman was given full opportunity to defend himself and finding of misconduct was justified and the punishment was not disproportionate.

Learned counsel for the petitioner submitted that according to the procedure for disciplinary action, applicable to the petitioner, if his services were not to be continued in spite of acquittal, the punishment could only be of termination from service under Rule 19.3. Though the Appellate Authority had modified the punishment to that of termination, once the punishment of dismissal was passed, which was illegal, the said illegality could not be cured in appeal and the punishment being vitiated, was liable to be set-aside. Reliance has been placed on a judgment of the Hon'ble Supreme Court in ***Tilak Chand Magatram Obhan v. Kamala Prasad Shukla and others*** 1995 Supp (1) SCC 21, wherein after referring to an earlier judgment in ***Rattan Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-educational) Higher Secondary School*** (1993) 4 SCC 10=JT (1993) 3 SC 487, it was held that the that Appellate Authority could not cure the initial defect in the constitution of an inquiry.

We are unable to accept the submission made. The

judgment relied upon was in respect of a situation where the defect went to the root of the matter affecting jurisdiction of the authority taking a decision, which is not the position in the present case. At best, the present was a case of error in the decision which could be rectified by the Appellate Authority. Judgment relied upon is, thus, distinguishable.

Reliance has also been placed, by learned counsel for the petitioner, on ***Captain M. Paul Anthony v. Bharat Gold Mines Ltd. and another*** AIR 1999 SC 1416, wherein finding of misconduct recorded by the disciplinary authority on the same evidence, on which, the employee was acquitted, was held to be unjustified.

We do not find any merit in this contention also. Reference may be made to judgment of the Hon'ble Supreme Court in ***Uttaranchal Road Transport Corpn. v. Mansaram Nainwal*** AIR 2006 SC 2840, wherein judgment in ***Captain M. Paul Anthony's*** case (*supra),* was also considered. It was observed:-

> "10. The position in law relating to acquittal in a criminal case, its effect on departmental proceedings and re- instatement in service has been dealt with by this Court in Union of India and Anr. v. Bihari Lal Sidhana (1997 (4) SCC 385). It was held in paragraph 5 as follows :
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> > "5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be re-instated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control and Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been

> working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Re-instatement would be a charter for him to indulge with impunity in misappropriation of public money."
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> 14. Unfortunately, the High Court has not discussed the factual scenario as to how the Anthony's case (supra) had any application. As noted above, the position in law relating to acquittal in a criminal case and question of re-instatement has been dealt with in Sidhana's case (supra). As the High Court had not dealt with the factual scenario and as to how the Anthony's case (supra) helps the respondent, we think it appropriate to remit the matter back to the High Court for fresh consideration. Since the matter is pending for long, it would be in the interest of the parties if the High Court is requested to dispose of the writ petition within a period of 4 months from the date of receipt of this order." `

Again in ***Commr. of Police, Delhi v. Narender Singh***

AIR 2006 SC 1800, it was observed:-

> **12.** It is not in dispute that the standard of proof required in recording a finding of conviction in a criminal case and in a departmental proceeding are distinct and different. Whereas in a criminal case, it is essential to

prove a charge beyond all reasonable doubt, in a departmental proceeding preponderance of probability would serve the purpose. [See *Kamaladevi Agarwal* v. *State of W.B. and others, (2002) 1 SCC 555]*

13. It is now well settled by reason of a catena of decisions of this Court that if an employee has been acquitted of a criminal charge, the same by itself would not be a ground not to initiate a departmental proceeding against him or to drop the same in the event an order of acquittal is passed.

14. In Manager, Reserve Bank of India v. S. Mani and others [(2005) 5 SCC 100], this Court held:

> "It is trite that a judgment of acquittal passed in favour of the employees by giving benefit of doubt per se would not be binding upon the employer....."

[See Bank of India and another v. Degala Suryanarayana (1999) 5 SCC 762; Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corporation Ltd., Haldia and others (2005) 7 SCC 764].

It could not be laid down that if an employee is acquitted in a criminal trial, he cannot be proceeded against in disciplinary proceedings. Parameters applicable in criminal trial are different from those applied in disciplinary proceedings and thus, disciplinary authority can take its own decision on the issue of misconduct irrespective of the decision of the criminal case.

We do not, thus, find any merit in this petition.

Dismissed.

(Adarsh Kumar Goel)

Judge

September 10, 2007 **(Ajai Lamba)**

ashwani **Judge**